IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1512 of 1991

Date of Decision: 13-10-2004

STATE OF GUJARAT

Versus

NARANSINHBHAI CHUNILAL PATEL

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellant Mr.L.B.Dabhi, AGP

For the Respondent-claimants Mr.A.S.Asthavadi, Adv.

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

#. This Appeal is directed against the Award of the Motor Accident Claims Tribunal-4, Ahmedabad, in Motor Accident Claims Petition No.184 of 1984, dated 26.6.1990.

#. First Appeal No.1511 of 1991 - State of Gujarat v. Kashmiraben Rasiklal Patel, arising out of the same accident, has already been dismissed on 23.6.2004. The accident took place on 20.7.1984 at 6:40 p.m. at the northern end of Subhash Bridge, opposite Ghanshyamnagar, Vadaj-Sabarmati road, when Ms.Sushilaben (deceased), with

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Whether reporters of Local Papers may be allowed to

see the Judgment?

niece Ms.Kashmiraben Rasiklal Patel had gone for the temple at Sabarmati, Keshavnagar, and were going along the road from Ghanshyamnagar to Purshottamnagar. While crossing the road, the offending Van No.GAO-2119 came from the southern end of Subhash Bridge at a high speed driven rashly and negligently, intruding to the left side, dashed its front bumper with Sushilaben, as a result, she came under the front chassis between the front two wheels and died on the spot, while right front wheel ran over right thigh of Kashmiraben, whereby Kashmiraben suffered severe injuries on her right leg.

Allegation is that the accident is a result of rash and negligent driving of the offending vehicle, otherwise it could be avoided. Compensation to the extent of Rs.1,75,000/= is claimed.

New India Insurance Company has been deleted while other respondents resisted the claim. They have not denied the accident, but say that it was not caused due to rash and negligent driving of the van. They say that the deceased and Kashmiraben were crossing the road carelessly and negligently, so they met with the accident. Vehicle was being driven carefully and brakes were applied when Kashmiraben and deceased were seen crossing the road, still the accident could not be avoided. Consequently, the two women are liable for contributory negligence, no compensation is payable, petition liable to be rejected.

#. After framing issues on the pleadings of parties, seeking evidence and hearing them, conclusion drawn is that the accident took place as alleged, therefore, compensation of Rs.1,38,600/= with interest at the rate of 9% from the date of application till realization payable within three months is awarded. In case the payment is not made within three months from the date of interest, the award amount is to carry interest at the rate of 12% p.a.

#. The appellants are not satisfied with this Award, therefore, it has been challenged through this Appeal.

We have been taken through the evidence by Shri L.B.Dabhi, learned Assistant Government Pleader, in support of the submission that the Award is liable to be set aside since the findings of the Claims Tribunal are not rested on evidence. The deceased was negligent in crossing the road, therefore, the accident took place, otherwise, there was no negligence by driver of the Van

which was being driven carefully. Other submission is that compensation awarded is excessive, therefore, it be reduced.

#. The evidence has been considered carefully with a view to test whether the findings recorded by the Claims Tribunal can be sustained or not. In our considered opinion, it is clear from the evidence that Van was being driven rashly and negligently at a high speed on the bridge. The driver should have been careful in driving the vehicle and avoided the accident. The contention that driver applied brakes but could not avoid the accident cannot be accepted. Rather, it goes to show that speed was excessive to the extent that even application of brakes could not stop the vehicle. It is quite common that pedestrians are on the road and they are likely to cross road on occasions to reach the destination, therefore, high responsibility is cast on the driver of the vehicle to be careful on such ways and avoid accident by driving vehicle at "Dead Slow" speed. Had the driver of the Van done so in this case, accident could have been avoided. There is enough evidence to show that it was the driver of the Van who is responsible for causing the accident and the deceased and Kashmiraben did not contribute in that. Consequently, the findings recorded by the Claims Tribunal are sustainable and are confirmed. Similarly, looking to the extent of compensation, in the context of age of deceased and the claimants, the compensation awarded cannot be said to be excessive.

#. Consequently, we find no merit in this Appeal and the same is dismissed. No order as to costs.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K.RATHOD)
JUDGE

(sunil)